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Holdings Co., LLC., and Xslent
Technologies, LLC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

XS HOLDING B.V., et al.

Plaintiffs,

v.

COOL EARTH SOLAR, INC., et al.,

Defendants.

Case No. C08 02282 PVT

SUGGESTION OF PROBABLE
ABSENCE OF SUBJECT
MATTER JURISDICTION

Defendants XET Holdings, Co., LLC [XET] and Xslent Technologies, LLC [XT] respectfully show:

1. The citizenship of the parties. Jurisdiction in this case is founded solely upon diversity of citizenship pursuant to 28 U.S.C. §1332. According to the complaint (¶9) plaintiff XS Holding BV [XS] is a Dutch corporation.

● **XET.** Defendant (and derivative plaintiff) XET is an LLC and is owned by its members XS (a Dutch corporation)(¶18), Atira Technologies, LLC [Atira], and Xslent, LLC [Xslent] whose membership is predominantly Californian. For diversity purposes, LLC's such as XET are citizens of *all* of the places of citizenship of *each* of their members. (Oddly enough, an LLC's place of formation is irrelevant for jurisdictional analysis). *Johnson v. Columbia Properties* (9th Cir. 2006) 437 Fed. 3rd 894, 899. See also the thoughtful and succinct analysis by Judge Jenkins of this court in *Thiara v. Kiernan* (2006) 2006 WL 3065568.

Because one of XET's members (XS) is a Dutch citizen, XET is *also* a Dutch citizen.

SUGGESTION OF PROBABLE ABSENCE OF SUBJECT MATTER JURISDICTION

1 Diversity jurisdiction is destroyed.

2 • **XT.** The identical analysis just set out applies to XT as well.

3 **2. Conclusion.** This court lacks subject matter jurisdiction because there is not complete
4 diversity of citizenship between the plaintiffs (including XS) and the defendants XT and XET
5 9both of which are Dutch citizens).

6
7 DATED: MAY 2, 2008

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8 By: /s/ Christopher Ashworth
9 CHRISTOPHER ASHWORTH